

STATEMENT

IN

Reference to the Applications and Contracts

OF

JOHN AND FRANCISCO FORSTER.



SACRAMENTO:

STATE OFFICE..... JAMES J. AYERS, SUPT. STATE PRINTING.

1886.

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UNIVERSITY OF CALIFORNIA, LAND DEPARTMENT, }
BERKELEY, September 28, 1886. }

Hon. A. L. RHODES, of Land Committee, San Francisco, California :

SIR: In compliance with your request, I herewith respectfully submit the following statement in reference to the applications and contracts of John and Francisco Forster, made under the grant of 150,000 acres.

The following is a copy of the application and contract of John Forster. The conditions of Francisco Forster's contract is the same :

GRANT OF ONE HUNDRED AND FIFTY THOUSAND ACRES FOR AGRICULTURAL COLLEGE PURPOSES.

Application for Location under the State.

Location No. 411.

LOS ANGELES LAND DISTRICT, LOS ANGELES, CAL., February 17, 1872.

To ANDREW J. MOULDER, Land Agent of the University :

I, John Forster, of Los Angeles County, State of California, do hereby apply, under the provisions of an Act to create and organize the University of California, approved March 23, 1868, and of an Act entitled "An Act to provide for the management and sale of the lands belonging to the State," approved March 28, 1868, and of an Act amendatory thereto, passed April 4, 1870, to purchase and locate the following described land in Los Angeles County, containing 2,268.78 acres, according to the returns of the U. S. Surveyor-General, and which I agree to accept in lieu of the full amount of 2,280 acres, for which I agree to pay to the University of California five dollars per acre, in gold coin of the United States, in the following manner, viz.: Twenty per cent of the purchase money, together with yearly interest on the balance at the rate of ten per cent per annum, in advance, from the date of approval of the location by the Land Agent of the University; and at any time after the expiration of five years from date, and after one year's notice, I agree to make payment in full, when demanded by said Agent; and if all the conditions of this agreement are not complied with, then the lands shall revert to the University without suit, and any approval hereof shall be and become null and void.

JOHN FORSTER.

February 17, 1872, John Forster made application for the selection of 2,268.78 acres which he agreed to accept for 2,280 acres in Tp. 9 S., R. 7 W., San Bernardino Meridian.

February 17, 1872, Francisco Forster made application for the selection of 431.60 acres, which he agreed to accept for 440 acres in Tp. 9 S., R. 7 W., S. B. M.

The above applications were approved May 1, 1872, by H. A. Higley, Land Agent of the University.

The above selections were listed in Clear List No. 2, minimum, Los Angeles District. Approved June 17, 1873.

John Forster's application was listed for.....	2,188.78 acres.
Francisco Forster's application was listed for.....	431.60 acres.

Total	2,620.38 acres.
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December 2, 1872, John Forster paid on principal	\$2,280 00
December 2, 1872, John Forster paid interest to January 1, 1873.....	608 00
And interest from January 1, 1873, to January 1, 1878—five years	4,560 00

December 2, 1872, Francisco Forster paid on principal	\$440 00
December 2, 1872, Francisco Forster paid interest to January 1, 1873	117 50
And interest from January 1, 1873, to May 1, 1878.....	938 50
	<hr/> 1,496 00

Total amount paid by John and Francisco Forster of principal and interest..	\$8,944 00
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Letter press copies show that:

On September 23, 1878, demand was made for the interest due for 1878, of.....	\$1,088 00
On August 21, 1879, demand was made for balance of principal of.....	9,120 00
On August 21, 1879, demand was made for interest from January, 1878, to September, 1879, of.....	1,520 00

Suit was commenced against John Forster October 25, 1879, for two years' interest, viz: \$1,824.

September 14, 1882, by request of O. Livermore, acting as agent for the Forster's, statement was forwarded to said Livermore, showing balance due by John Forster, of \$13,705, to January 1, 1883; Francisco Forster, \$2,591, to January 1, 1883.

On the above statement, said Livermore made the following indorsement:

The above communication and account was received by me on or about the date it bears, and was by me inclosed to the heirs of the estate of John Forster, deceased.

[Signed:]

O. LIVERMORE.

The following telegram was received from O. Livermore:

LOS ANGELES, March 21, 1883.

J. HAM. HARRIS:

Mr. Forster will be in San Francisco with me next Monday, with view to settlement of your claim. All right.

[Signed:]

O. LIVERMORE.

A few days subsequent to the receipt of the above telegram, a conference was held with Marco and Francisco Forster, their attorney Leach, and O. Livermore, by John B. Mhoon, counsel for the Regents of the University, and the Land Agent of the University.

Messrs. Leach and Forsters stated that the contracts made with the University of California, by John and Francisco Forster, for the selection of lands in township nine south, range seven west, San Bernardino meridian, were void and not binding upon the estate of John and Francisco Forster, deceased, and declined to carry out the conditions of the contracts; also, that the land in question was not worth more than fifty cents per acre.

At a meeting of the Board of Regents April 23, 1883:

The Land Committee reported a proposition from the heirs of the estate of John Forster to pay the University \$8,000; *provided*, that said amount shall be accepted in full satisfaction of all demands of the University against the estate of John Forster, deceased, on location No. 411.

On motion, the proposition was postponed to the next meeting, with instructions to the committee to report the exact facts, with a statement of amounts paid and amounts due.

At the meeting of the Board May 28, 1883, the following was reported by the Chairman of the Land Committee:

In compliance with the resolution of the Board, of date April 23, 1883, requesting this committee to report the exact facts, with a statement of amounts paid and amounts due by John Forster, deceased, on his location, No. 411, the Land Agent was instructed to prepare said statement.

The statement of the Land Agent was then read and ordered on file.

STATEMENT OF LAND AGENT.

BERKELEY, May 28, 1883.

Hon. JOS. W. WINANS, Chairman of Committee on Agricultural Lands:

SIR: In compliance with the instructions of your committee, I herewith submit a statement of "the facts and amounts paid and due" by John Forster, deceased, on his Location Number 411, made under the Agricultural Grant of 150,000 acres.

John Forster made application and executed contract with the Land Agent of the University on the seventeenth of February, 1872, to purchase the following described lands in Los Angeles County, at five dollars per acre: The NE $\frac{1}{4}$ and fractional S $\frac{1}{2}$ of Section 4, all of Section 3, and fractional W $\frac{1}{2}$ of Section 2, and SE $\frac{1}{4}$ of NE $\frac{1}{4}$, and fractional S $\frac{1}{2}$ of Section 9, all of Section 10, and fractional W $\frac{1}{2}$ of Section 11, and lots 1 and 2 of Section 14, all in township 9 south, of range 7 west, San Bernardino meridian, containing 2,268 $\frac{78}{100}$ acres, accepted in lieu of the full amount of 2,280 acres. Said selection was accepted by the Register of the Los Angeles District, April 16, 1872.

On December 2, 1872, said Forster made the following payments:

Twenty-five per cent of principal (or \$1 per acre).....	\$2,280 00
Interest from May 1, 1872, to January 1, 1873.....	608 00
Fees.....	64 00
	<hr/>
	\$2,952 00

Making a total of twenty-nine hundred and fifty-two dollars.

Whereupon Certificate of Purchase No. 94 was issued to said Forster, leaving a balance of principal due of \$9,120, bearing interest at the rate of ten per cent per annum. Subsequently to December 2, 1872, said Forster paid the annual interest from January 1, 1873, to January 1, 1878, namely: \$4,560, which, added to his payments of December 2, 1872, gives a total amount paid by said Forster of \$7,512.

His estate yet owes the following amounts, viz.:

Balance of principal due on 2,280 acres, at \$4 per acre	\$9,120 00
Interest from January 1, 1878, to June 1, 1883, being five years and five months, at ten per cent per annum	4,940 00
	<hr/>
	\$14,060 00

Making a total of fourteen thousand and sixty dollars to June 1, 1883.

On October 25, 1879, the attorney for the Board commenced suit in the — District Court in San Francisco for interest due, amounting to \$1,824. Said suit is still pending.

Respectfully submitted.

J. HAM. HARRIS, Land Agent.

Regent Wallace then called up the application of the heirs of John Forster, as reported on page 49 of these minutes, and moved that the application be denied. Carried.

Meeting of Board of Regents September 4, 1883. The Secretary presented a petition of M. A. Forster, requesting the Board of Regents to unite with him in a request to the Commissioner of the General Land Office for a resurvey of T. 9 S., R. 7 W., S. B. M., together with a map and other papers. Referred to Land Committee.

Meeting of the Board of Regents, October 15, 1883. Regent Winans then submitted the report of the Land Committee, as follows :

In the matter of the petition of M. A. Forster, by his attorney Theo. Wagner, asking that the Board of Regents "join with him in an application to the Commissioner of the General Land Office for a resurvey of township 9 south, range 7 west, San Bernardino meridian, in order that a resurvey may be obtained which will show the true area of said township, enable your petitioner to correctly locate lands owned by him therein, and secure to your University proper credit for lands which, by having no existence in fact, are improperly located and charged thereto."

It is claimed by said Forster that the survey made by Deputy U. S. Surveyor, Max Strobel, in the year 1869, was fraudulent, and that there is a large area returned as public land by said Strobel, which lies in the Pacific Ocean, comprising some 1,500 acres. After due examination of the affidavits submitted to us in support of said claim, made by Richard Eagan, with maps attached, also from the office of the U. S. Surveyor-General, we recommend that the Land Agent of the University of California be authorized and empowered to make application, to the Commissioner of the General Land Office, for a resurvey of township 9 south of range 7 west, S. B. M., in consequence of the apparent errors in the survey made by Deputy U. S. Surveyor, Max Strobel.

On motion, the recommendation of the committee was concurred in.

MEM.—The Land Committee, in committee, refused to join with M. A. Forster in application for a resurvey.

In compliance with instructions of the Board, the Land Agent, under date of October 25, 1883, requested the Commissioner to order a resurvey, and the following letter was received:

[COPY.]

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }
WASHINGTON, D. C., November 8, 1883. }

J. HAM. HARRIS, Esq., *Land Agent of the California University, San Francisco, California:*

SIR: I have received your letter dated October 25, 1883, submitting certain papers therein named in reference to alleged errors or frauds in the survey of Tp. 9 S., R. 7 W., S. B. meridian, California, and requesting in behalf of the Board of Regents of said University, that a resurvey of said township be authorized. In reply, I have to state, that there are no funds at the disposal of this office to pay for any resurveys.

Very respectfully,

N. C. McFARLAND, Commissioner.

[Signed:]

Meeting of Board of Regents May 1, 1884. Regent Winans submitted the following resolution, and moved its adoption:

WHEREAS, It is manifestly to the advantage of the University of California, to reconvey such interest as the State of California may have acquired in the lands situated in T. 9 S., R. 7 W., S. B. M., as are not included in the F. Von Leicht survey, heretofore selected and listed to the State of California under the Agricultural College grant by the United States; now, therefore, be it

Resolved, That the Governor of the State of California is hereby requested to execute and deliver to the United States a proper conveyance, pursuant to the Act of the Legislature approved March 13, 1883, for said lands, as the same are described in a deed this day presented by the counsel of this Board to the Board of Regents, a copy whereof is to be duly filed in the office of the Secretary of the Board.

Deferred until the next quarterly meeting.

Meeting of Board of Regents, May 23, 1884. Regent Hallidie offered the following resolution, which was adopted:

Resolved, That in the matter of the form of deed to be executed by the Governor of this State, reconveying certain lands in Tp. 9 south, R. 7 west, S. B. M., that it be referred to the Land Committee, with power as to taking action in the premises, what action to take, and when to take it.

The Finance Committee reported: "Mr. Wagner, on behalf of the Forsters, represents, in a statement herewith submitted, of date of May 20, 1884, that the Forsters have received only 1,560 acres of land from the University, and that the sum due thereon amounts to \$2,038 83.

"We recommend that Mr. Wagner's statement be referred to the counsel of the Board."

July 8, 1884. A letter from Theo. Wagner, of date June 12, 1884, Attorney for Forster heirs, was presented to the Board of Regents, Wagner claiming that to the twentieth of May, 1884, there would be due the University on the Forster locations, a balance of \$2,038 83. Said letter was referred to the Land Committee.

By request of the Land Committee, the Land Agent made the following statement:

SAN FRANCISCO, May 15, 1884.

John and Francisco Forster, in account with the Regents of the University of California, Dr.:

To principal on 1,560 ²³ / ₁₀₀ acres, at \$5 per acre	\$7,804 65
To interest on balance of principal of \$6,243 ⁷² / ₁₀₀ , from May 1, 1872, to May 15, 1884, at 10 per cent	7,492 46
	<u>\$15,297 11</u>

Credit.

By payment on account of principal	\$2,720 00
By payment on account of interest	6,224 00
	<u>8,944 00</u>

Balance due May 15, 1884	\$6,353 11
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MEM.—The above area of 1,560²³/₁₀₀ acres, was by statement of Theo. Wagner, accepted as the number of acres that could be conveyed, but the letter of Commissioner of June 26, 1885, gave the area as 1,626⁸³/₁₀₀ acres.

At a meeting of the Board of Regents August 5, 1884, Regent Winans presented the report from the Land Committee, signed by all its members.

In reference to the letter of Theo. Wagner, Esq., attorney for Marco and Francisco Forster, referred to the Land Committee at the meeting of the Board of July 8, 1884, your committee recommend the adoption of the following resolution:

Resolved, That the proposition on the part of the Forster heirs in this communication be rejected, and that a counter proposition be made that they keep and pay for the 1,560²³/₁₀₀ acre portion, and that the Regents return to them the amount which has been paid as principal on the 1,159 acre portion.

The resolution was adopted.

At a meeting of the Board September 2, 1884, Regent Winans, from Land Committee, reported that the Forster heirs, through their attorney, refused to accede to the proposition of the Board.

Regent Hallidie moved to refer the whole matter to the Land and Law Committees, jointly, with power to act finally as a joint committee.

It was moved to strike out the last clause, and substitute therefor "to report their recommendation to the Board." The amendment was adopted.

At a meeting of the Board March 3, 1885, Regents Rhodes, Winans, and Rodgers, made the following report:

At a meeting of the Joint Committee, held the thirteenth of December, 1884, to consider the matter of the refusal of the heirs of John and Francisco Forster, by their attorney, Theo. Wagner, to accept the proposition passed by the Board, August 5, 1884, by the following resolution recommended by the Land Committee, viz:

Resolved, That the proposition, on the part of the Forster heirs, in their communication, be rejected, and that a counter proposition to them be made, that they keep and pay for the 1,560.93 acre portion, and that the Regents return to them the amount which has been paid as principal on the 1,159 acre portion.

After careful consideration, your committee recommend that the above resolution be adhered to. Adopted.

MEM.—At the meeting of the Joint Committee, were present, Regents Winans, Rhodes, Beard, Swift, and Rodgers.

Theo. Wagner, attorney for Forster heirs, rejected the above proposition.

Meeting of Board of Regents August 14, 1885. The Land Committee, through Regent Winans, presented the following report:

Your committee recommend the adoption of the following resolutions:

Resolved by the Board of Regents of the University of California, That the said Board of Regents does hereby consent to the cancellation, by the General Land Office, of the selection made by the State, through the Land Agent of the University of California, under the Agricultural College Grant, of lands situated within Township No. 9 south, of range No. 7 west, San Bernardino meridian, amounting to 2,620 $\frac{38}{100}$ acres—said selection bearing date of March 20, 1872; and also consent to the cancellation of the corresponding clear list No. 2, issued by the General Land Office, approved June 17, 1873; the cancellation of said selection and list to be made *upon the condition* that the University be permitted to select, under the Agricultural College Grant, the lands described in said selection and list which are shown by, and appear upon, the survey of said township, approved September 2, 1884, amounting to 1,626 $\frac{31}{100}$ acres; and to select also, under said grant, lands to the amount of 993 $\frac{77}{100}$ acres, the said two selections to be in lieu of said first mentioned selection.

Resolved further, That the Land Agent of said University be and he is hereby authorized, on behalf of said Board of Regents, to procure the cancellation, by the General Land Office, of the first mentioned selection, and clear list, upon the condition above mentioned. And the Land Agent of the University is hereby instructed to apply for an amendatory selection of 1,626 $\frac{31}{100}$, being the tracts to which the University is entitled, according to the plot of 1884, as set forth in the Commissioner's letter to the Register and Receiver, Los Angeles District, California, dated June 26, 1885.

On motion, the above resolutions were adopted.

[COPY.]

1884 { 91,718
25,447

D. K.
H. H.
N. O. C.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }
WASHINGTON, D. C., June 26, 1885. }

Register and Receiver, Los Angeles, California:

GENTLEMEN: The following tracts in Tp. 9 S., of R. 7 W., San. Ber. Mer., are described in clear list 2, approved June 17, 1873, of lands selected under the Agricultural College Grant:

Fr'l W. $\frac{1}{2}$ Sec. 2	273.12 acres.
All of Sec. 3	640.00 acres.
S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, and Fr'l S. $\frac{1}{2}$ Sec. 4	347.47 acres.
S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and Fr'l S. $\frac{1}{2}$ Sec. 9	144.10 acres.
All of Sec. 10	640.00 acres.
Fr'l W. $\frac{1}{2}$ of Sec. 11, and Lots 1 and 2, Sec. 14	144.09 acres.
Lots 1, 2, 3, 4, 6, 7, and 8, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 15, and Lot 2, Sec. 22	431.60 acres.
Total	2,620.38 acres.

The selections were made according to the plat approved January 20, 1870. The eastern line of the township, as platted originally by the plat mentioned, would run through a private grant, and the western and southern lines would fall in the Pacific Ocean. The township was platted as containing more land than it actually contained. The State having selected tracts along the boundaries of the township, she was debited with a greater quantity of land, under the grant, than was obtained.

A plat of a new survey of the township has been received and accepted, approved September 2, 1884. By this plat the following tracts are covered by the selections:

Lots 1, 2, 3, 4, and 5, of Sec. 2	123.00 acres.
All of Sec. 3	622.40 acres.
N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and Lots 6, 7, 8, and 9, Sec. 4	300.25 acres.
Lots 1 to 15, inclusive, Sec. 10	489.48 acres.
Lot 1, Sec. 11	9.48 acres.
Lots 1, 2, 3, and 4, Sec. 15	82.00 acres.
Total	1,626.61 acres.

The State desires to be credited with the difference in the totals above given, to wit, 993.77 acres.

With letter dated at Berkeley, California, September 3, 1884, J. Ham. Harris, Land Agent of the University of the State, forwarded a deed of relinquishment executed by the Governor under Act of the Legislature of the State, approved March 13, 1883, reconveying to the United States all the land, or what was platted as land, outside of the new survey and described in said clear list of selections, on condition that the State be credited for the quantity last above stated.

Should the State, by an amendatory list of the current series of numbers, select the quantity of 1,626.61 acres—the tracts to which it is entitled according to the plat of 1884, as above set forth—the matter will receive due attention.

Inform the proper State authority of the contents hereof, a copy of which will be furnished Mr. Harris.

Very respectfully,

WM. A. J. SPARKS, Commissioner.

Under the instructions of the Board of Regents, at their meeting of August 14, 1885 (See Minutes, vol. 6, p. 45), the Land Agent of the University forwarded to the Register and Receiver, Los Angeles District, under date of August 24, 1885, an amendatory application, in accordance with the Commissioner's letter of June 26, 1885, amounting to 1,626 $\frac{61}{100}$ acres.

At a meeting of the Board, April 8, 1886, the Finance Committee submitted the following statement from the Land Agent, relative to the indebtedness of the Forster estate, without recommendation:

Estate of John and Francisco Forster, in account with the Regents of the University of California—Dr.:

To 2,720 acres applied for as per their contract, less 993 $\frac{77}{100}$ acres to correct error of original survey—1,726 $\frac{23}{100}$ acres at \$5 per acre	\$8,631 15
To interest from May 1, 1872, to April 1, 1886	9,609 32
	<hr/>
Credit—By principal paid	\$2,720 00
By interest paid	6,224 00
	<hr/>
	8,944 00
Balance unpaid to April 1, 1886	<hr/>
	\$9,226 47

No payments of interest have been made since the year 1877, thus the applicants have forfeited all claim under their contracts. Some two years since an effort was made to obtain a settlement from the heirs of the Forster estate, but without success, they claiming that the contract was not binding upon the estate, and, also, that the demand was excessive.

[Signed:]

J. HAM. HARRIS, Land Agent.

Referred by the Board to Finance Committee, with power to settle.

At a meeting of the Board of Regents, April 8, 1886, the Secretary presented the following petition:

To the Hon. the Board of Regents of the University of California:

GENTLEMEN: Your petitioner would respectfully set forth the following facts: January 20, 1870, the plat of survey of T. 9 S., R. 7 W., S. B. M., was approved by the U. S. Surveyor-General for California.

October 31, 1873, D. B. Kurtz made application to the State Surveyor-General to purchase the following tracts as indemnity or lieu land, to wit:

E. $\frac{1}{2}$ of N.W. $\frac{1}{4}$, N.W. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of Sec. 4.

Lots 1, 2, and 3, and N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of Sec. 9.

Lot 5 of Sec. 15, T. 9 S., R. 7 W., S. B. M.

November 1, 1873, the State filed in the Land Office at Los Angeles its application for said land.

March 3, 1874, the State issued a certificate of purchase to D. B. Kurtz for same.

The following tracts were listed to the State in List 2, selected under the Agricultural College Grant.

Fractional W. $\frac{1}{2}$ of Section 2.

S $\frac{1}{2}$ of N. E. $\frac{1}{4}$ and fractional S. $\frac{1}{2}$ of Section 4.

All of Section 3.

S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and fractional S. $\frac{1}{2}$ of Section 9.

All of Section 10.

Fractional W. $\frac{1}{2}$ of Section 11.

Lots 1 and 2 of Section 14.

All (except Lot 5) of Section 15.

Lot 2 of Section 22.

Township 9 S., R. 7 W., S. B. M., containing 2,620.38 acres.

September 2, 1884, a new plat of survey of this township was approved, the old one becoming absolute.

The new plat made an entire change in the township, involving a loss of 1,873.14 acres, and materially changing the description of the land remaining.

By the new plat there is a conflict between the agricultural and the indemnity grants.

By a mutual concession this conflict may be avoided.

The land selected by the State as indemnity land, when described by legal subdivisions as per new plat of survey, would call for lots 3, 4, 5, and 6, of Section 4, Lot 1 of Section 5, Lot 1 of Section 9, Lots 3, 4, 5, and 12 of Section 10, Lots 1 and 2 of Section 15.

The above shows a conflict as to Lots 3, 4, 5, and 12 of Section 10, and Lots 1 and 2 of Section 15.

The claimant under the indemnity selection is ready to relinquish claim to Lots 3 and 12 of Section 10, and Lots 1 and 2 of Section 15, containing 94.45 acres, and now respectfully asks that the Land Agent of the University be authorized to relinquish claim to Lots 4 and 5 of Section 10, containing 69.42 acres.

Respectfully,

THEO. WAGNER,

Attorney for claimants, under D. B. KURTZ.

Referred to Land Committee.

At the meeting of the Board of Regents, May 25, 1886, Regent Mayre presented the following report from the Finance Committee:

"In the matter of the claim against the Forster heirs we recommend the adoption of the following minute:

"That the University will carry out as far as possible its contract for sale of lands to the Forsters; that a patent will be issued to the Forster heirs for all the land that can be conveyed under the Forster locations, for the sum of \$4,373 90, that being the amount due the University at the lowest acceptable estimate, on the fifteenth day of May, 1886—interest to be added, up to the date of payment." On motion, concurred in.

At the meeting of the Board of Regents, June 29, 1886, the following report from the Land Committee was presented:

"In the matter of the petition of Theo. Wagner, attorney for claimants under D. B. Kurtz, requesting that the Land Agent of the University be authorized to relinquish claims to lots 4 and 5 of Section 10, Tp. 9. S., R. 7 W., S. B. M., amounting to 69 $\frac{42}{100}$ acres, upon the relinquishment of said Kurtz to the University of indemnity selections to lots 3 and 12 of Section 10, and lots 1 and two of Section 15, Tp. 9 S., R. 7 W., S., B. M., containing 99 $\frac{45}{100}$ acres—we recommend that no action be taken until information be received from the General Land Office at Washington, in relation thereto." Concurred in.

The Secretary submitted a letter from Theo. Wagner, attorney for Forster heirs and D. B. Kurtz, of date June 17, 1886. Referred to Land Committee.

The following is a copy of said letter:

MARTINEZ, CALIFORNIA, June 17, 1886.

G. H. Harris, Esq., Land Agent State University of California:

DEAR SIR: I have been at your office at the University on four different occasions to see you, but without finding you. I have therefore concluded to write you in relation to the matter about which I called to see you.

By examining your records you will find that the University sold to the Forsters in the aggregate 2,720 acres.

By examining the map of the township as then supposed to be surveyed, you will also find that it was then supposed to contain 3,107 $\frac{32}{100}$ acres.

By subtracting the number of acres selected in said township by the University from the total number of acres in said township, you will find that there were 387 $\frac{32}{100}$ acres which the University did not select.

Of those 387 $\frac{32}{100}$ acres which the University did not select, 320 acres were applied for by the State of California as lieu land selections, and were sold by the State to D. B. Kurtz.

The application for a resurvey of the township was granted upon the supposition that all the parties in interest asked for it and acquiesced in it, as otherwise the General Land Office had no power or jurisdiction over the matter.

In either event, however, neither party in interest would or could be allowed under this resurvey to obtain any advantage over the other, and it is of the greatest importance to all parties that the parties in interest should settle among themselves in an amicable way, how the lesser quantity of land found should be distributed among them, for the reason that any attempt of one to obtain what is claimed by the other, might result in setting aside the new survey and reinstating the old survey, as the General Land Office would very likely not care to settle such a dispute; or, if that was not done, the General Land Office would very probably say: The land in that township has all been disposed of by the Government, and the Government has therefore no further interest in the matter, and that it declines to settle the controversy between Mr. Kurtz and the University; and it would also very likely refuse to take any further action in the matter, but would refer us to the Courts to settle our conflicting claims first, so as to let a Court determine what belongs to the University and what to Mr. Kurtz. This is not a case of an application for public lands in the first instance, but it is a case in which the Government has actually parted with its title and where rights have become vested.

A Court of equity would most assuredly rule that both parties can only take *pro rata* of the land actually in existence.

By persisting upon your application, as made under the new survey, you may therefore force the General Land Office to adhere to the old survey, and that certainly is a result which the University does not wish to bring about, for the reason that it would result in charging to the University the full 2,720 acres, while, if it came to a legal contest, the University could recover for no more than is actually in existence from the Forsters.

When the General Land Office advised you to adjust your selections to the present survey, you ought to have considered that as an equitable privilege extended to you by the General Land Office, and not as a legal right; and that request of the General Land Office did not authorize you or the University to take anything in that township that you had not taken by your former selections, consequently your action in applying for all the land in that township, according to the new survey, was unauthorized, and to the extent that it included lands in the possession of Mr. Kurtz, it was absolutely null and void so far as Mr. Kurtz is concerned.

It will not do to say in this case, that the General Land Office need not approve the selections that are in conflict with Mr. Kurtz's selections, for it will readily be seen that if Mr. Kurtz claims certain lands under State lieu selections, and the University also claims those lands under its grant, the duty is imposed upon the General Land Office of deciding between these conflicting claims, which, of course, precipitates a contest which, according to the rules of the department, can only be disposed of by means of a proper hearing, which will involve expense, and, in the present state of business in the General Land Office, and under the practice prevailing in such contests, would consume years of time before being finally settled, and then it might be settled, as heretofore pointed out, in a manner not agreeable to either party.

It will also be well, in such a contest, to consider the question whether the contest would not bring up and necessarily raise all questions regarding the power of the honorable Commissioner to order resurvey, etc.

So long as all parties in interest are satisfied, no stranger in interest can complain or be heard, but if the parties in interest get to quarreling among themselves, and bring their matters before the General Land Office, it necessarily brings up all the questions now *res adjudicata* anew. I do not think that it would be wise to do this, or that the honorable Board of Regents would authorize it if they knew.

Your action in attempting to select the whole of the township was therefore ill advised and hasty, and if not recalled will result in indefinitely postponing a settlement of this vexed question, and I therefore respectfully request that you recall your selections under

the present survey, and that you adjust your former selections under the old pretended survey to the new official survey, by selecting the following lands, viz.:

	No. of Section.	Acres.	100ths.
Lot No. 1	5	3	12
Lots 1, 2, 6, 7, 8, 9, and S. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ and N.E. $\frac{1}{4}$ of S.E. $\frac{1}{4}$	4	300	25
The whole of	3	622	40
Lots 1, 2, 3, 4, and 5 of	2	123	00
Lots 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of	10	420	86
Lot 1 of	11	9	48
Lots 1, 2, 3, and 4 of	15	82	00
Totals	-----	1,561	11

Thus leaving for Mr. Kurtz to select in satisfaction of his three hundred and twenty acres location of lieu lands:

	No. of Section.	Acres.	100ths.
Lots 3, 4, and 5 of	4	106	30
Lots 1 of	9	24	00
Lots 4 and 5 of	10	69	42
Totals	-----	199	82

This as nearly in the proportion which the amount of land actually in existence bears to the former supposed area as it is possible to select it according to the Government subdivisions, and according to the actual locations formerly made upon the ground.

In the event that you decline to recall your reselections, I respectfully request a description of the land included in location No. 411, made by John Forster, which was approved May 1, 1872, and which was for 2,280 acres, and location No. 412, made by Francisco Forster, also approved May 1, 1872, which was for 440 acres.

I also respectfully request information under and by what authority you made the reselection of all the land in said township, according to the present survey, whether upon your own motion and responsibility, or by direction of the Land Committee, or the honorable Board of Regents.

I desire this information to use in laying the whole matter before the honorable Board of Regents.

I intend to have the same printed, with the maps attached, and to mail to each Regent a copy, so that the whole matter shall be fully understood when they meet.

I am tired of being sent from pillar to post, and back again, in this matter, and I desire to bring it to a conclusion in some way; and if I cannot do it otherwise, I must do it by legal process.

In conclusion, I would suggest that if I have convinced you that the attempted selection of all the land in that township under the new survey, was a mistake, it would only increase our respect, and that of all right-minded men, for those responsible for the mistake, if they frankly admit it, and correct it as soon and as far as possible.

As your reselections have not yet been approved, you can simply file your reselections, as herein indicated, stating therein, that it is in lieu of the former reselections of such a date, which you desire to recall, and request the return of such former reselection.

An early reply would greatly oblige,

Your truly,

THEO. WAGNER,

Attorney for Forster heirs and D. B. Kurtz.

NOTE.—The statement that the University had selected all the land in said township according to new survey is a mistake, but was based upon a verbal statement by G. H. Harris, the Land Agent of the University, to me; and it is also evident that the calculation by which the sum of \$4,373 90 is claimed to be due, is based upon the assumption that the University takes all the land in the township under the new survey.

THEO. WAGNER.

MEM.—The Land Agent denies making the above statement. He did not know the area of the township—only the area to which the University was entitled, viz.: 1,626.61 acres.

At a meeting of the Land Committee on September 25, 1886, present, Regents Winans and Rhodes, the following report *to be made to the Board of Regents* was adopted:

In the matter of the petition of Theo. Wagner, attorney for Forster heirs and grantees of D. B. Kurtz, dated June 17, 1886, addressed to the Land Agent of the University and referred by the Board June 29, 1886, your committee report as follows:

Inasmuch as the petition of Theo. Wagner is, by his own statement therein, based upon legal grounds, it becomes apparent that the rights he claims involve legal questions only, which should be decided by the Courts or other public authorities, and not by this Board.

We therefore recommend that his petition be denied. In further support of this recommendation, we refer to the decision of the Department of the Interior, General Land Office, Washington, D. C., rendered by the Commissioner, dated July 9, 1886, a copy of which is hereunto annexed:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE, }
WASHINGTON, D. C., July 9, 1886. }

Register and Receiver, Los Angeles, California:

GENTLEMEN: The following selections of tracts in Tp. 9 S., of R. 7 W., San Bernardino meridian, made March 20, 1872, per lists 7 and 8, under the Agricultural College Grant, which tracts are described in list 2, approved June 17, 1873, are hereby canceled:

Fractional W. $\frac{1}{2}$ Sec. 2	273.12 acres.
All of Sec. 3	640.00 acres.
S. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and Fr'l S. $\frac{1}{2}$ of Sec. 4	347.47 acres.
S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and Fr'l S. $\frac{1}{2}$ of Sec. 9	144.10 acres.
All of Sec. 10	640.00 acres.
Fr'l W. $\frac{1}{2}$ of Sec. 11, and Lots 1 and 2 of Sec. 14	144.09 acres.
Lots 1, 2, 3, 4, 6, 7, and 8, N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Sec. 15, and Lots 2, Sec. 22	431.60 acres.
Total	2,620.38 acres.

This action is taken in accordance with letter to you of June 26, 1885, in which it was set forth that the State, by reason of the above selection, made by a defective plat, was debited with 993.77 acres falling in a private grant and the Pacific Ocean; that a relinquishment by the Governor had been made, under Act of the Legislature, in order that the State might be credited with the latter quantity, and that should an amendatory list be filed, properly describing the tracts which the State is entitled to under the selections, aggregating 1,626.61 acres, the matter would receive attention. The amendatory application by the State, received with your letter of August 26, 1885, is herewith returned. It is in due form, and describes correctly the land to which the State is entitled by the plat of new survey, approved September 2, 1884, and you will allow the same. Make it of record in the usual manner, and transmit it to this office.

Note the cancellation on your records, and inform J. Ham. Harris, Land Agent of the University of the State, of the action taken.

Very respectfully,

S. M. STOCKSLAGER,
Assistant Commissioner.

In conclusion, I will state that at the time John and Francisco Forster made their applications, in February, 1872, to H. A. Higley, Land Agent of the University, the University *did not undertake to sell* the land applied for. The Land Agent was simply acting as a *locating agent*, and was governed by the statement of said Forsters, that said tracts contained 2,700 $\frac{38}{100}$ acres, *which they contracted to accept for 2,720 acres*. They also made affidavits that there were no adverse claims to said land to prevent the selection under the agricultural grant. It is evident that before the said Forsters filed their applications they or their attorney had examined the maps and records in the United States Land Office, or they could not have described by subdivisions the land sought for. Hence the University was not a party to the errors of selection.

Very respectfully,

J. HAM. HARRIS,
Land Agent of the University of California.



